

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELLEN MARLIER)	
Claimant)	
VS.)	
)	
UNITED PARCEL SERVICE)	Docket No. 190,706
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent requested Appeals Board review of the Award entered by Administrative Law Judge Robert H. Foerschler dated April 25, 1996. The Appeals Board heard oral argument on August 20, 1996 in Kansas City, Kansas.

APPEARANCES

Claimant appeared by her attorney, Keith L. Mark of Mission, Kansas. Respondent and its insurance carrier appeared by their attorney, Stephen A. McManus of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Debera A. Erickson of Kansas City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The respondent listed the following issues for Appeals Board review:

- (1) Nature and extent of claimant's disability.
- (2) Whether claimant is entitled to the unauthorized medical allowance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, considering the briefs and hearing the arguments of the parties, the Appeals Board finds as follows:

- (1) The Administrative Law Judge found that the claimant was entitled to a 10 percent permanent partial general body disability based on functional impairment for work-related injuries claimant received while employed by the respondent between March 1, 1994 and March 18, 1994. Respondent stipulated that the claimant's injuries were a result of her performing her regular job duties. At the regular hearing, claimant had returned to her regular job at a comparable wage. Therefore, she is only eligible for permanent partial general disability benefits based on functional impairment and not work disability. See K.S.A. 44-510e. Furthermore, claimant did not make a claim for work disability.

Accordingly, the only dispute in reference to the nature and extent of claimant's disability was whether her work-related injuries left her with any permanent functional impairment. In regard to that issue, the evidentiary record contained the testimony of Edward J. Prostic, M.D., and Jeffrey T. MacMillan, M.D., both board-certified orthopedic surgeons. The Administrative Law Judge also appointed Craig G. Mills, M.D., to perform an independent medical examination and to express a permanent functional disability opinion. Dr. Mills' medical report was also admitted into the record. Dr. Prostic examined the claimant at the request of her attorney and opined that claimant's permanent functional impairment that had resulted from her work-related injuries was 15 percent. Dr. MacMillan, who examined the claimant at the mutual request of the union and the respondent, opined that claimant suffered no permanent functional impairment. Dr. Mills' independent medical evaluation report stated that claimant had a 9 percent permanent partial impairment of the whole body.

The respondent argued the Administrative Law Judge erred when he found Dr. Prostic's and Dr. Mill's permanent functional impairment opinions more credible than Dr. MacMillan's. Respondent contended that Dr. MacMillan's zero percent opinion was the most credible opinion and should, at the minimum, be averaged with Dr. Mills' opinion for a 4.5 percent functional impairment rating. Claimant, on the other hand, argued the most credible rating was Dr. Prostic's 15 percent. Claimant vigorously argued that Dr. MacMillan's opinion was not credible and should not be given any weight in determining

claimant's permanent functional impairment. Claimant asserted the minimum that claimant should be awarded for her claim for permanent partial general disability benefits would be 12 percent which would equally weigh both Dr. Prostic's and Dr. Mills' opinions.

The Appeals Board finds the Administrative Law Judge's Award which found that the claimant was entitled to a 10 percent permanent partial general disability should be affirmed in all respects. The Administrative Law Judge found the permanent functional impairment ratings, as opined by Dr. Prostic and Dr. Mills, were more credible than Dr. MacMillan's and the Appeals Board agrees with that analysis.

The Appeals Board finds that the Administrative Law Judge has set out his findings of fact and conclusions of law in reference to the issue of nature and extent of claimant's disability in some detail in his Award. The Appeals Board finds it is not necessary to repeat those findings and conclusions in this Order. The findings and conclusions of the Administrative Law Judge are found to be accurate and appropriate, and we adopt those findings and conclusions as our own as if specifically set forth in this Order.

(2) The respondent argued that the claimant was not entitled to an award of unauthorized medical expenses as provided for in K.S.A. 44-510(c)(2). Furthermore, the respondent asserted that if unauthorized medical expenses were awarded and payment was made to Dr. Prostic for his examination of the claimant, his testimony would be inadmissible and his opinion in reference to permanent functional impairment would be excluded.

During oral argument, the claimant's attorney stated that claimant's request for unauthorized medical expenses would not be applied to Dr. Prostic's statement for the examination of claimant. The Appeals Board, therefore, finds that unauthorized medical expenses awarded by the Administrative Law Judge should be affirmed subject to the provisions of K.S.A. 44-510(c)(2) up to the maximum amount of \$500.00.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated April 25, 1996, should be, and hereby is, affirmed as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Ellen Marlier, and against the respondent, United Parcel Service, and its insurance company, Liberty Mutual Insurance Company, and the Kansas Workers Compensation Fund for an accidental injury which occurred on March 18, 1994.

Claimant is entitled to 25 weeks of temporary total disability compensation at the rate of \$313.00 per week or \$7,825.00, followed by 40.5 weeks of permanent partial general disability at the rate of \$313.00 per week or \$12,676.50 for a 10 percent permanent partial general disability making a total award of \$20,501.50, which is all due and owing and is ordered paid in one lump sum less any amounts previously paid.

All other orders of the Administrative Law Judge contained in his Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of August, 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Stephen A. McManus, Kansas City, KS
Debera A. Erickson, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director